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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 07/26/2004
M ROBERT KESTENBAUM
11011 BERMUDA DUNES NE
ALBUQUERQUE, NM 87111

EXAMINER	
CADUGAN, ERICA E	
ART UNIT	PAPER NUMBER
3722	44
DATE MAILED: 07/26/2004	

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/068,278	07/09/1998	BEAT LOCHER	ROSS11-PC/P	2154

TITLE OF INVENTION: CONTINUOUS CABLE PROCESSING DEVICE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$0	\$665	10/26/2004

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

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- A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.
- B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

- A. Pay TOTAL FEE(S) DUE shown above, or
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II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

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7590 07/26/2004

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(Depositor's name)
(Signature)
(Date)

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nonprovisional	YES	\$665	\$0	\$665	10/26/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
CADUGAN, ERICA E	3722	029-564400

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 _____

2 _____

3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent); ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is not claiming SMALL ENTITY status. See, e.g., 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

(Authorized Signature)

(Date)

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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M ROBERT KESTENBAUM 11011 BERMUDA DUNES NE ALBUQUERQUE, NM 87111			EXAMINER CADUGAN, ERICA E	
			ART UNIT 3722	PAPER NUMBER
DATE MAILED: 07/26/2004				

Determination of Patent Term Extension under 35 U.S.C. 154 (b) (application filed after June 7, 1995 but prior to May 29, 2000)

The Patent Term Extension is 0 day(s). Any patent to issue from the above-identified application will include an indication of the 0 day extension on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability

Application No.

09/068,278

Applicant(s)

LOCHER ET AL.

Examiner

Art Unit

Erica E Cadugan

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

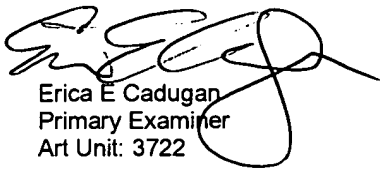
1. ☒ This communication is responsive to amendment of 4/13/2004 and interview of 7/14/2004 *§ 7/22/04. sec 7/22/04*
2. ☒ The allowed claim(s) is/are 39-49, 75-82, 84, 85, 87-90, 100-113, 115-118, 120-123, 125 and 132-136.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☒ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Erica E Cadugan
Primary Examiner
Art Unit: 3722

Art Unit: 3722

EXAMINER'S AMENDMENT ~~II~~

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Kestenbaum on July 14, 2004.

2. The application has been amended as follows:

In the specification, on page 1, the following sentence has been inserted on the first line beneath the title:

I 14
U.S. Patent Application 09/068,278 is the entry into national stage for PCT/EP97/05216 filed on 23 September 1997, which is a continuation-in-part of PCT/EP96/04790, filed on 4 November 1996.

In the specification, page 42, the paragraph that was added before the last paragraph in the amendment filed September 54, 2001 (Amendment "D") that reads:

Fig. 33 shows various tools, including cutting tools, severing tools, clamping tools, marking apparatus, and grinders. More specifically, Fig. 33 shows a frame of a cutting station holding a pair of cutters (203, 204) and cutting knives (201, 202). Rollers (205, 206) mark the cable (207) as it passes through the cutting station. Grinders (208, 209) are positioned following the frame of the cutting station.

has been deleted.

The claims have been amended as follows:

236 (Amended). The apparatus as claimed in claim ~~88~~, [comprising:
AI 1 a pair of tool supports (1, 2) for holding at least two tools (3) in pairs, and] wherein the positioners include a tool support feed (5) for lateral positioning of [at least one of] said [at least

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Art Unit: 3722

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two] tools (3a, b, c, d) above [a] the [first] transport path (100) [along which a cable (107) whose insulation is to be stripped can be inserted and transported in its feed direction, whereas the axis of said cable is parallel to said first transport path], wherein said tool support feed (5) is formed for a controlled lateral drive for controlled sideward movement of at least one of said [pair] upper and lower [of] tool supports (1, 2) to any desired position within a working range laterally with respect to said [first] transport path (100).

37 40 (Amended). The apparatus as claimed in claim 38, wherein said tools have upper and lower positions, the positioners each comprising a separate and independent tool support feed (5a, b) coordinated with [each] a respective tool support (1, 2) so that said upper and lower positions of said [at least two] tools (3) can be combined, wherein said combination is achieved by independent motors (16a, 16b) for said independent tool support feeds.

3 41 (Amended). The apparatus as claimed in claim 39, wherein said [pair of] upper and lower tool supports (1b, 2b; 1c, 2c) are held on a common support part (8) and can be displaced together with said common support part (8).

42 (Amended). The apparatus as claimed in claim 39, wherein said tool supports (1, 2) have, in a lateral direction, a plurality of positionable holders for holding said [at least two] plurality of tools (3), said [at least two] tools (3) being selectable as required from a group of cable-processing tools.

43 (Amended). The apparatus according to claim 42, wherein said group of cable-processing tools consists of at least one of cutting tools[5] or severing tools[5], ~~clamping tools,~~ ~~marking apparatuses and grinders~~].

L In claim 44, line 1, "said pair of" has been changed to --said upper and lower--.

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Art Unit: 3722

In claim 44, line 3, "first" has been deleted.

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Claim 45 (Amended). The apparatus as claimed in claim 39, wherein said [at least two] plurality of tools (3) are arranged in pairs and comprise at least two pairs of blades.

In claim 49, line 2, "first" has been deleted.

Non-elected claims 50-74 have been canceled.

In claim 73, line 4, "first" has been deleted.

In claim 76, line 4, --at least one-- has been inserted prior to "blade".

In claim 76, line 5, "second" has been changed to --at least one--.

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20 (Amended). The process as claimed in claim 76, the apparatus further comprising at least one [of] clamping and centering apparatus (A, B; 111, C, 112; 013) that comprises jaws which lie in a plane perpendicular to said transport path, each of said jaws [have] having a retaining surface, which retaining surfaces are approximately perpendicular to a radial plane with the cable (107) and are formed in such a way that fully closing of said clamping and centering jaws (A, B; 111; C, 112; 013) is possible.

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78 (Amended). The apparatus as claimed in claim 134, wherein [a] the cutting apparatus comprises at least two blade jaws (030) which lie in a plane, each having a cutting edge, which cutting edges are formed at least approximately parallel to one tangential plane of a cable (107) and can be fully closed and can be advanced to give different initial contact points on a cable sheath, depending on cable diameter.

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79 (Amended). The apparatus as claimed in claim 134, wherein said second processing station, and at least one centering and clamping apparatus (A, B; 111, C; 112, 013) are in a form

Art Unit: 3722

of an automatic processing module (057) which is [removable] removably mounted on a continuous cable processing machine (058).

I3 ~~71~~ 80 (Amended). The apparatus as claimed in claim ~~79~~³⁰, wherein said module (057) is connected to a frame of said continuous cable processing machine (058) by a hinge (059) so that said [machine] module can be swiveled out of an axial working position to a position inclined relative thereto.

In claim 81, line 3, "second" has been changed to --at least one--.

I4 ~~29~~ 82 (Amended). The apparatus as claimed in claim ~~78~~²⁸, wherein, for controlling movement of said at least one rotatable blade (030) [on said second rotatable blade] across said [first] transport path (100), displaceable rods (060) are provided which have, in a region of a plurality of blade holders (015), wedge surfaces (016) which cooperate with diametrically opposite formations of said blade holder (015), said rods (060) coming into contact at another end with a wedge strap (018) which is displaceable along said [first] transport path (100) by non-rotatable actuators (061).

[Non-elected claim 83 has been canceled.

I5 ~~15~~ 84 (Amended). The apparatus as claimed in claim ~~39~~², wherein at least one of an upper and a lower roller (111), continuous belts (112) or a pair of rollers, a pair of continuous belts, respectively, and upper and lower tools holders (1) are each displaceable transversely with respect to said [first] transport path (100), relative to an opposite part in each case, so that a twisting procedure can be performed on a cable (107) lying in between.

[In claim 85, line ~~3~~⁴, "at least two" has been changed to --plurality--.

[Non-elected claim 86 has been canceled.

Claim 88 has been amended as follows:

88 (Amended). A continuous cable insulation stripping apparatus with a transport path along which a cable may be transported, wherein said transport path is parallel to the longitudinal axis of a cable to be transported along said transport path, comprising

I 6 [at least one tool,]

at least [one] an upper and a lower tool support,

a plurality of stripping tools on each tool support

and [a] positioners that independently relatively position[s] the [at least one] tool supports in a direction that is both perpendicular to a working direction of the [at least one] tools and perpendicular to [a] the parallel transport path wherein said positioners position[s] said [at least one] upper and lower tool supports to more than two positions.

In claim 89, line 2, "first" has been deleted.

Non-elected claims 91-99 have been canceled.

100 (Amended). The apparatus according to claim 88, wherein in addition to said more than two positions for said [at least one] upper and lower tool supports, a displaceability of one or more transporters (A, B; 112, C, 113) is available which permits displacement of at least one of said cable (107) and at least one cable end (107a, b) from a first transport path (100) to at least a second transport path (102, 103), and wherein a processing station (16, 17) is available along said second transport path (102, 103).

I 7 [Claim 101 has been amended as follows:]

101 (Amended). The apparatus according to claim 100, wherein said processing station comprises at least one transport or processing station (16, 17), selected from the group consisting

Art Unit: 3722

of an insulation stripping station, [~~a sawing station,~~] a cutting station, [~~a twisting station, a shaping station, a crimping station, a soldering station,~~] a cable processing station and a manipulator.

~~141~~ 102 (Amended). The apparatus according to claim 100, wherein at least one of the one or more transporters (A, B; 4; C, 112, 113) is guided in a linear guide (110) transversely to said first transport path (100) and can be moved by a drive apparatus (111, 114).

~~105~~ 105 (Amended). The apparatus as claimed in claim 100, wherein transport drives are located on both sides of said processing station (E, F, G, 115) [and a common control (200) also controls said blade station (E, F, G, 115)].

In claim 106, line 2, --one or more-- has been inserted prior to "transporters".

In claim 107, line 2, --one or more-- has been inserted prior to "transporters".

In claim 107, line 3, "support" has been changed to --supports--.

In claim 109, line 4, --at least one-- has been inserted prior to "blade".

In claim 109, line 5, "second" has been changed to --at least one--.

In claim 110, lines 2-3, "a clamping and centering" has been changed to --the at least one

clamping and centering--.

In claim 113, lines 2-3, "and closest to said second blade" has been deleted.

Non-elected claim 114 has been canceled.

Non-elected claim 119 has been canceled.

~~121~~ 121 (Amended). The apparatus as claimed in claim 100, further comprising a computer that controls said sideward movement of said [at least one of said pair of] tool supports.

Art Unit: 3722

I 11 308 123 (Amended). The apparatus as claimed in claim 88, wherein said tools, said [at least one] tool supports and said positioners are within one module.

Non-elected claim 124 has been canceled.

I 12 52 125 (Amended). The apparatus according to claim 88, further comprising [a continuous cable processing apparatus having] rollers or continuous belts for longitudinal transport of [a] the cable along [a] the transport path (100), wherein said rollers (A, B; 111) or continuous belts (C; 112) are located opposite one another across said transport path (100) and are adjustable relative to one another and can be opened and closed dependent on the shape of the cable and in a feed-controlled manner and can be moved together lateral to said transport path.

Non-elected claims 126-130 have been canceled.

Claim 131 has been canceled.

I 13 53 132 (Amended). The apparatus as claimed in claim 88, [comprising:
a pair of tool supports (1, 2) for holding at least two tools in pairs, and] wherein the positioners include a tool support feed (5) for lateral positioning of [at least one of] said [at least two] tools (3a, b, c, d) above [a first] the transport path (100) [along which a cable (107) whose insulation is to be stripped can be inserted and transported in its feed direction, whereas the axis of said cable is parallel to said first transport path], wherein said tool support feed (5) is formed for a controlled lateral drive for controlled sideward movement of at least one of said [pair of] upper and lower tool supports (1, 2) to any desired position within a working range laterally with respect to said [first] transport path (100), further comprising a first and a second processing station wherein the second processing station has a rotatable blade whose axis of rotation is parallel to said [first] transport path, wherein at least one of said processing stations includes],

Art Unit: 3722

and] at least one centering and clamping apparatus (A, B; 111, C; 112, 013) [are] and is in a form of an automatic processing module (057) which is removably mounted on a continuous cable processing machine (058) by a hinge (059) so that said at least one processing station [machine] can be swiveled out of an axial working position to a position that is inclined relative thereto.

IB 51 133 (Amended). The apparatus as claimed in claim 88, [comprising:

a pair of tool supports (1, 2) for holding at least two tools in pairs, and] wherein the positioners include a tool support feed (5) for lateral positioning of [at least one of] said [at least two] tools (3a, b, c, d) above [a first] the transport path (100) [along which a cable (107) whose insulation is to be stripped can be inserted and transported in its feed direction, whereas the axis of said cable is parallel to said first transport path], wherein said tool support feed (5) is formed for a controlled lateral drive for controlled sideward movement of at least one of said [pair of] upper and lower tool supports (1, 2) to any desired position within a working range laterally with respect to said [first] transport path (100), further comprising a first and a second processing station wherein the second processing station has a rotatable blade whose axis of rotation is parallel to said [first] transport path, wherein a cutting apparatus comprises at least two blade jaws (030) which lie in a plane, each having a cutting edge, which cutting edges are formed at least approximately parallel to one tangential plane of a cable (107) and can be fully closed and can be advanced to give different initial contact points on a cable sheath, depending on cable diameter, wherein, for controlling movement of said rotatable blade (030) [on said second rotatable blade] across said [first] transport path (100), displaceable rods (060) are provided which have, in a region of a plurality of blade holders (015), wedge surfaces (016) which cooperate with diametrically opposite formations of said blade holder (015), said rods (060)

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Art Unit: 3722

coming into contact at another end with a wedge strap (018) which is displaceable along said [first] transport path (100) by non-rotatable actuators (061).

I13 19 Claim 134 (Amended). The apparatus as claimed in claim 39, further comprising a first and a second processing station wherein the second processing station has a cutting apparatus including at least one rotatable blade whose axis of rotation is parallel to said [first] transport path.

3. The following is an examiner's statement of reasons for allowance: JP-9-46844-A (Tomoji) and Applicant's Admitted Prior Art (hereinafter AAPA) regarding the CS 9100 on pages 1-2 of the present specification are representative of the closest prior art of record to the present invention as set forth in independent claim 88.

Regarding Tomoji, it is noted that Tomoji has a publication date of 2/14/1997. It is also noted that on September 22, 2003, Applicant submitted a certified translation of Swiss Application 2329/36, filed 9/23/1996, and thus the Tomoji reference is not available as prior art.

Regarding AAPA, it is noted that AAPA teaches an apparatus having pairs of knives that are laterally offset with respect to the cable feed axis, which pairs are adjacent to one another, and are capable of being laterally displaced via an upper and a lower common knife holder being displaced by a pneumatic drive in such a way that a cable fed into the apparatus along the axis could be cut into or cut through by either one or the other knife. For this purpose (cutting), AAPA also teaches that the knives are displaceable in a working direction relative to one another.

However, AAPA does not teach "positioners that independently relatively position the tool supports in a direction that is both perpendicular to a working direction of the tools and

Art Unit: 3722

perpendicular to the parallel transport path wherein said positioners position said upper and lower tool supports to more than two positions” as set forth in independent claim 88, i.e., AAPA does not teach that the upper and lower knife holders are “independently” relatively moved in both of the directions claimed.

Additionally, there is no combinable teaching in the prior art of record that would reasonably motivate one having ordinary skill in the art to so modify the teachings of AAPA, and thus, for at least this reasoning, AAPA does not render obvious the present invention as set forth in independent claim 88.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Priority

4. Throughout the prosecution of this case, Applicant has been attempting to get priority all the way back to the 1995 filing date of Swiss application 3235/95.

However, in order to get the chain to go back to 1995, Applicant is going to have to file a U.S. continuation under 35 USC 120 to the 371 (09/068278), which sets forth at the time of filing the entire chain of priority (stating that the new case is a CON of 09/068278, filed 7/9/1998, which is a 371 of PCT/EP97/05216, filed 9/23/97, which claims priority under 35 USC 119 to Swiss application 2329/36, filed 9/23/96, and which (PCT/EP97/05216) is a CIP of PCT/EP96/04790, filed 11/4/1996, which (PCT/EP96/04790) claims priority under 35 USC 119 to Swiss application 3235/95, filed 11/6/1995.)

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Art Unit: 3722

The reason for this is that the priority claim in a 371 application has to be made in accordance with the PCT rules. In the '97 PCT case (PCT/EP/05216), and thus the present 371, the benefit claim to the 1995 Swiss application could NOT have been properly made because it was filed more than a year prior to the date of the '97 PCT (see PCT Rule 4.10, and particularly section (a)(i) thereof, which states:

(a) Any declaration referred to in Article 8(1) ("priority claim") may claim the priority of one or more earlier applications filed either in or for any country party to the Paris Convention for the Protection of Industrial Property or in or for any Member of the World Trade Organization that is not party to that Convention. Any priority claim shall, subject to Rule 26 bis.1, be made in the request; it shall consist of a statement to the effect that the priority of an earlier application is claimed and shall indicate:

(i) the date on which the earlier application was filed, being a date falling within the period of 12 months preceding the international filing date;...

Note that under PCT rules, there is nothing precluding the use of a chain of applications to get back to a particular date, but the chain can still only go back a year. Thus, since the '97 PCT could not have properly made a benefit claim to the '95 Swiss application, the 371 cannot properly make a benefit claim to the '95 Swiss Application. However, in a US case filed under 35 USC 111, the priority rules do not prohibit the chain of priority from going back more than a year, so long as all of the necessary priority conditions are met.

Thus, to properly get the benefit of the '95 application, the above chain of priority should be asserted at the time of filing in a continuing application filed under 35 USC 111 claiming benefit under 35 USC 120 to the present 371 application (09/068278).

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Art Unit: 3722

Oath/Declaration

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration filed on September 22, 2003 is defective because:

- 1) It was not signed by all inventors and
- 2) it improperly sets forth a benefit claim to Swiss application 3235/95 under 35 USC 119, which, as described in detail above, the present application is not entitled to do.

6. Applicant is now required to submit a substitute declaration or oath to correct the deficiencies set forth above. The substitute oath or declaration must be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability" (PTO-37). Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136. Failure to timely file the substitute declaration (or oath) will result in **ABANDONMENT** of the application. The transmittal letter accompanying the declaration (or oath) should indicate the date of the "Notice of Allowance" (PTOL-85) and the application number in the upper right hand corner.

Conclusion

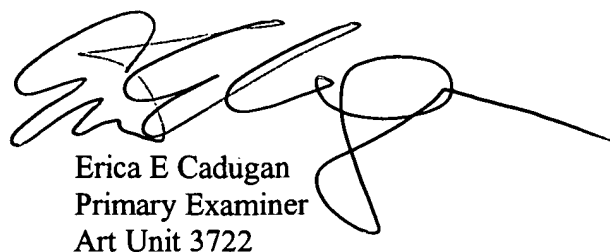
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erica E Cadugan whose telephone number is (703) 308-6395. The examiner can normally be reached on M-F, 7:30 a.m. to 5:00 p.m., alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (703) 308-2159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Art Unit: 3722

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Erica E Cadugan
Primary Examiner
Art Unit 3722

eec
July 22, 2004

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